

PATENT

Attorney Docket No.: 10142/04201

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Girard et al.

Serial No.: 10/807,590

Filed: March 24, 2004

For: DUAL LUMEN PORT WITH
F-SHAPED CONNECTOR

Group Art Unit: 3798

Examiner: Matthew F. Desanto

Board of Patent Appeals and Interferences

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REPLY BRIEF UNDER 37 C.F.R. § 41.41

In response to the Examiner's Answer mailed on June 30, 2008 to the revised Appeal Brief filed on April 1, 2008, and pursuant to 37 C.F.R. § 41.41, Appellants present this Reply Brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims Final Office Action dated July 26, 2007 rejecting claims 1, 7, 8, 10-18, 44-50 and 52-55.

In providing further support for the contention that the prior art teaches a substantially F-shaped flow element, the Examiner states that the “term substantially that is before the ‘F-shaped flow element’ and ‘parallel’ allows the Examiner to find a structural element that is close to those limitations but not exactly parallel and F-shaped.” Examiner’s Answer at page 8. The term “substantially” obviously permits certain deviations from the traditional conception of the shape of the letter “F,” but not to the extent envisaged by the Examiner. The issue that this statement raises is when does a shape deviate to such an extent from an F-shape, as commonly understood, that it can not reasonably be regarded as being F-shaped.

In addressing the argument of the Examiner, Appellants have offered a way to make such a distinction that respects the traditional understanding of what an F looks like and yet allows for certain visual deviations from it. For instance, Appellants have proposed comparing the prior art shape to how the letter is typically taught at school. See Appeal Brief at page 6. With this traditional conception as a baseline, one can judge whether a shape that deviates from a traditional F is still “substantially” an F. The claim further emphasized the F-shaped nature of the flow element by reciting that it had arms that are “substantially parallel.” Given that the specification and drawings present an embodiment of the F-shaped element that in practically all aspects truly matches the common conception of what an F looks like, the Examiner ought not be allowed to use the term “substantially” to interpret the term to cover objects that deviate in visually striking ways from this common understanding. “Substantially” in this context is meant to impart to the claim a scope that allows it to capture objects that differ in certain limited aspects from the traditional shape of an “F,” but not to such an extent that it covers objects that resemble

letters other than an "F" more closely. In other words, for an object to fall within the scope of the F-shaped element, its overall visual impression must lead an observer to conclude that the letter F bears the closest resemblance. If another letter most closely resembles the object, then it follows that this object is not F-shaped. Appellants have drafted this claim term as precisely as the subject matter permits. They should not be expected, for instance, to recite the specific angular ranges between the arms and common stem in order to exclude the prior art shapes cited against the claim. Since the letter F does not bear the closest resemblance to the prior art objects cited against the recited F-shaped element, then the claim is distinguishable from the art on that basis.

This point is further reinforced by the Cupp reference regarding its connector 107 as Y-shaped. If Cupp labels the connector 107 as a Y-shaped connector, that means that inventor Cupp, after considering all the letters of the alphabet, believed that the letter Y most closely resembles connector 107 in shape. Since there is nothing unreasonable in this judgment, one of ordinary skill in the art would likewise regard it as Y-shaped. And if one of ordinary skill in the art believes it to be Y-shaped, then it is unreasonable to regard it as substantially F-shaped as well. A statement that an object represents one letter operates to exclude its resemblance to all the other letters. Although normally a prior element can be suitably described with more than one term, in this case the use of one letter to describe the shape of an object necessarily excludes all other letters as suitable descriptors, simply because the letters of the alphabet are each unique in form.

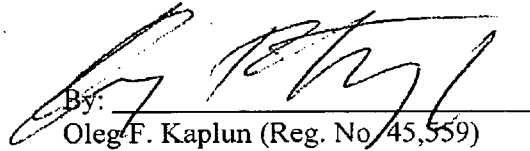
As for Ensminger, Appellants renew their reliance on the reasons previously given as to why it does not show the recited F-shaped element.

Conclusion

For the reasons set forth above, Appellants respectfully request that the Board reverse the final rejections of the claims by the Examiner and indicate that pending claims are allowable.

Respectfully submitted,

Date: July 24, 2008


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